

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MYRTIS PAULO HART,

Petitioner,

vs.

No. CV 20-00965 KG/JFR

ROBIN BORNE,
JOE LYTTLE,
MARK GALLEGOS,

Respondents.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court *sua sponte* under Fed. R. Civ. P. 41(b) on the “9-701 Petition for Writ of Habeas Corpus” filed by Petitioner Myrtis Paulo Hart. (Doc. 1) (“Petition”). The Court will dismiss the Petition without prejudice for failure to comply with a Court order, statutes, and rules, and failure to prosecute this proceeding.

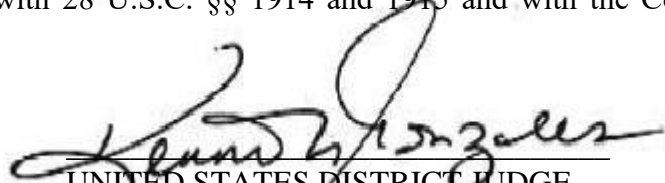
Petitioner Myrtis Paulo Hart filed his 9-701 Petition for Writ of Habeas Corpus on September 21, 2020. (Doc. 1). Hart’s Petition appears to have been copied from a New Mexico state habeas corpus form. The Petition seeks habeas relief and damages on the grounds that Petitioner could have been exposed to the COVID-19 virus in August 2020 when prison officials passed around a “Sharpie” so prisoners could mark their laundry. (Doc. 1). Petitioner did not pay the filing fee or submit an application to proceed *in forma pauperis* at the time he filed the Petition. The Court entered an Order to Cure Deficiency on September 24, 2020, directing Petitioner Hart to either pay the filing fee or submit an application to proceed under 28 U.S.C. § 1915 within thirty days of entry of the Order. (Doc. 2). With the Order to Cure, the Court also provided Petitioner

with a form Application to Proceed in District Court Without Prepayment of Fees or Costs. (Doc. 2 at 2). The Order advised Petitioner that, if he failed to cure the deficiency within the 30-day time period, the Court could dismiss this proceeding without further notice. (Doc. 2 at 1).

Petitioner Hart did not comply with the Court's September 24, 2020 Order. More than 30 days elapsed after entry of the Court's Order to Cure Deficiency and Petitioner did not pay the \$5 filing fee, submit an application to proceed under § 1915 in proper form, or otherwise communicate with the Court.

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required collect the filing fee from the Petitioner or authorize Petitioner to proceed without prepayment of the fee. Petitioner has failed to either pay the \$5 filing fee or submit an application to proceed under § 1915 in proper form. The Court may dismiss a proceeding under Fed. R. Civ. P. 41(b) for failure to comply with statutes or rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Therefore, the Court will dismiss this civil proceeding pursuant to Rule 41(b) for failure to comply with 28 U.S.C. §§ 1914, 1915, failure to comply with the Court's Order of September 24, 2020, failure to comply with statutes and rules, and failure to prosecute this proceeding.

IT IS ORDERED the Petition for Writ of Habeas Corpus filed by Petitioner Myrtis Paulo Hart on September 21, 2020 (Doc. 1) is DISMISSED without prejudice under Fed. R. Civ. P. 41(b) for failure to prosecute or to comply with 28 U.S.C. §§ 1914 and 1915 and with the Court's September 24, 2020 Order.



UNITED STATES DISTRICT JUDGE